

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 411 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

UMERBANU NISHAR AHMED

Appearance:

MR KP RAVAL APP for Petitioner

MR NAGIN N GANDHI for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH and

MR.JUSTICE H.R.SHELAT

Date of decision: 24/08/1999

ORAL JUDGEMENT [Per M.S. Parikh, J.]

1. This acquittal appeal arises from the decision rendered by the learned Additional Sessions Judge, Surat on December 20, 1991 in Sessions Case No. 120 of 1989. Accused Umerabanu Nishar Ahmed and Khatijabibi Abdul Kadar respectively aged 20 and 48 came to be acquitted of

the offences punishable u/S. 302 read with section 34 of the Indian Penal Code, for which they faced the charge and stood the trial.

2. According to the prosecution case deceased Afrojbanu married with Mohmad Hafij about one year before the date of incident. Soon after the marriage she was pregnant and went to her parental home on the occasion of her delivery. She gave birth to a male child. Ordinarily within one and half or one and quarter month after that occasion, the husband of Afrojbanu ought to have gone to take her to her matrimonial home. Since that did not happen and almost 3 months passed, a message was sent to her in-laws' house inter-alia informing that Afrojbanu should be taken to her matrimonial home, else a case would be filed. In reply, the parents of deceased Afrojbanu were informed that some one in the relation had died and, therefore, after two days the husband of Afrojbanu and other relations would go to take Afrojbanu. It has been alleged that relations/acquaintances on both the sides assembled at the parental house of deceased Afrojbanu and it was hinted to the persons assembled that there was some disturbance in the matrimonial life of Afrojbanu and that she should be kept with her husband separately from other members of the family. The persons who had gone from the side of the husband assured that whatever had happened would not be repeated. The allegations which were made from the side of the parents of deceased Afrojbanu were with regard to Afrojbanu either suspecting illicit relationship between her husband and his younger brother's wife Umerabanu, the accused no. 1 or she having alleged about illicit relationship between the two.

3. Deceased Afrojbanu had accordingly been sent to her matrimonial home and stayed over there for about 21 days. Soon thereafter, on 12/2/1989 at about 2.30 O'clock in the afternoon, accused no. 1 Umerabanu caught hold of deceased Afrojbanu, accused no. 2 Khatijabibi, her mother-in-law, poured kerosene on her and accused no. 1 Umerabanu had lit a match stick and caused burns to deceased Afrojbanu. It is then the prosecution case that Afrojbanu was taken to Maskati hospital where she had an occasion to give a complaint saying the aforesaid facts with regard to how she sustained burns. It has also been the prosecution case that after the complaint was recorded Executive Magistrate was called at the hospital for recording dying declaration of Afrojbanu. She gave the dying declaration setting out the facts with regard to how she was burnt by the two accused persons. The matter was investigated and upon conclusion of the

investigation, a charge-sheet was filed against two accused persons. The case was committed to the Sessions Court at Surat. Two accused persons pleaded not guilty to the charge and at the conclusion of the trial, they were acquitted of the offences with which they were charged. That is how the State is before this Court in this acquittal appeal.

4. We have heard the learned A.P.P. Mr. K.P. Raval and Mr. N.N. Gandhi, learned advocate for the respondents - accused persons. We have gone through the acquittal judgment. The Id. Additional Sessions Judge, after appreciating the evidence placed on the record, came to the conclusion that the complaint and the dying declaration on which the prosecution relied were doubtful and could not be relied upon for recording conviction mainly for the reason that there existed contrary facts and circumstances which were brought to light during the course of the investigation as well as in the prosecution evidence itself. However, Mr. K.P. Raval, Id. A.P.P. has read before us the evidence, and has mainly relied upon the oral evidence of prosecution witness no. 1 Jainabibi Nizamuddin, mother of deceased Afrojbanu, exh. 13, Nizamuddin Amirbhai Mansuri, P.W. 4, exh. 19, father of the deceased Afrojbanu, Miya Mahmud Navajkhan Firkiwala, P.W. 2 exh. 17 and Suleman Miya Mahmud Master, P.W. 3 exh. 18. Mr. Raval also canvassed the dying declaration as would appear in the complaint itself as well as appearing in the evidence of the mother of the deceased and one that has been recorded by the Executive Magistrate Hitendra Rambhai Patel, P.W. 7 exh. 25. Mr. Gandhi has relied upon the evidence of the medical witnesses Dr. Kusumben Bhagubhai Patel, P.W. 5, exh. 21, Dr. Shantilal Lallubhai Patel, P.W. 6 exh. 23, medical certificate based on the case papers exh. 24 and Dr. Nareshbhai Dalpatbhai Kantharia, P.W. 8 EXH. 28 coupled with post mortem report exh. 29 to which Dr. Nareshbhai Dalpatbhai Kantharia has deposed.

5. We have gone through the respective pieces of evidence as also the judgment rendered by the learned Additional Sessions Judge. At the outset we may state that the prosecution story itself runs into two diametric opposite sets of facts, one set of facts indicating that Afrojbanu committed suicide, reason apart, the other set of facts pointing out two accused having burnt Afrojbanu alive. As both sets of facts surface in the prosecution evidence itself and as the prosecution has failed to explain the set of facts which would indicate that Afrojbanu committed suicide by burning herself alive, it would be difficult to accept the prosecution story

emanating from the other set of facts. With these observations we would now deal with the evidence which was read by the Id. A.P.P. and learned advocate for the respondents. Before we do that, we might note certain facts which are not disputed and which cannot be disputed:

It is a fact that deceased Afrojbanu was married with Mohmad Hafij Abdul Kadar. It is also a fact that she gave birth to a male child out of the wedlock. It might be noted that she did not have any grievance or dispute with her husband. Even the prosecution witness no. 1 Jainabibi, mother of the deceased Afrojbanu, has in terms stated that Afrojbanu was being nicely treated and attended to by her husband. Only grievance that was expressed by deceased Afrojbanu was with regard to the relation which he was keeping with his younger brother's wife Umerabanu, accused no. 1. It has also appeared in the evidence that after Afrojbanu was pregnant, she went to her parental place for the occasion of delivery. Taking her back to her matrimonial home was delayed according to the prosecution case. It is here that P.W. No.1 Jainabibi Exh. 13 has deposed that Afrojbanu, her daughter, told her that her husband was having illicit relationship with his younger brother's wife Umerabanu, accused no.1. The witness informed Afrojbanu that when her husband and other relatives would come to take her back, the matter would be clarified and thereafter she would be sent to her husband's place. As although three months passed since Afrojbanu delivered a male child, none went to take her to her matrimonial home, a message was sent to the effect that if she would not taken to her matrimonial home, a case would be filed. There was a message in reply that as some one in the vicinity died Afrojbanu's husband and other relatives would go to take her after two days. Accordingly when they (Afrojbanu's husband, her father-in-law and three other persons) went to take Afrojbanu, they were informed that there was some affair and that if arrangement for her and her husband to live separate from the rest of the family was made, she would be sent. Said five persons replied that whatever had happened would not be repeated. On that assurance Afrojbanu was sent to her matrimonial home. The witness has further deposed that 21 days after that occasion she received a message that her daughter had sustained burns. She, therefore, went to the place where she was staying and found that Afrojbanu was lying in burnt condition. She, therefore, asked her daughter Afrojbanu as to what happened and Afrojbanu informed her that her mother-in-law and her sister-in-law (her husband's younger brother's wife) burnt her by pouring kerosene on

her. She has then deposed that thereafter her daughter was taken to Maskati hospital. According to her she was not allowed to enter the room where her daughter was admitted. Then police officer Mr. Chavda reached there and upon having asked where the injured was kept, he was shown the room where the deceased was kept. He recorded the statement of her daughter and came out of the room. Since her daughter was under treatment she had remained there. Her daughter died at about 1.15 O'clock on 17/2/1989 (around 5 days after she sustained burn injuries). After the dead body was entrusted to the witness, necessary ceremonies were performed. According to her the persons on the side of her husband had left the hospital after admitting her daughter and no one went to inquire of Afrojbanu's health thereafter. According to her she was much remembering her husband during the time she survived. In her cross-examination she admitted that her statement was recorded at around 7 O'clock in the evening on 12/2/1989. She has also admitted that she accompanied other persons in the ambulance in which her daughter was taken to the hospital. She has also admitted that the other persons included the persons from the family of her daughter's husband. As soon as she came to know about the incident at about 4.00 O'clock in the afternoon, she reached the place. Five minutes after she reached the place of Afrojbanu, the ambulance arrived. She was confronted with the names of other persons, who had been to the hospital. She has also admitted that police officer Mr. Chavda was accompanied with some other person, but she did not know who he was. That man accompanied Mr. Chavda into the room where Afrojbanu was kept. She has also admitted that her daughter Afrojbanu was in a serious condition. She deposed having heard afterwards that one Mahmudmiya Ibrahim, who was a close relative of Afrojbanu's father-in-law tried to save Afrojbanu and in the process sustained burns on his hands. She also admitted that Gulam Mohyuddin Noormiya, who was present in the Court was known to her in as much as he had gone to take her daughter. She has admitted that he was also present in the house of Afrojbanu's husband when she reached there. She did not remember whether her son-in-law Mohmad Hafij accompanied them in the ambulance. She was then confronted with her statement about she and her daughter Afrojbanu having accompanied her son-in-law and Gulam Mohmuddin Noormiya in the ambulance in which Afrojbanu was taken to Maskati hospital. She has also stated that when there was a quarrel at about 2.00 O'clock in the afternoon, Gulam Mohyuddin Noormiya was present as per the say of the deceased Afrojbanu to the witness. She then repeated that the deceased informed her about this

fact on the next day when she was in some senses. She denied the suggestion that when she reached the place where Afrojbanu sustained burns she was not conscious. She also denied the suggestion that she was by the side of Afrojbanu right from the time her complaint was taken and that she told her to make particular statements.

6. It is in the background of the aforesaid evidence flowing from the oral testimony of Afrojbanu's mother P.W. No.1 Jainabibi that the facts which are diametrically opposite and appearing in the prosecution evidence might be noted. For that purpose we might first refer to the evidence of Dr. Kusumben B. Patel, P.W. No.5 exh. 21. She has deposed that she was performing her duties as Medical Officer in Maskati hospital at the relevant point of time. At 4.00 O'clock in the afternoon on 12/2/1989 one Afrojbanu Mohmad Hafij was brought to the hospital on account of she having sustained burns. She examined the patient and found following injuries :-

- i. There were marks of burns on the face.
- ii. There were marks of the hairs having burnt. The upper limbs of both the hands showed burns marks. There were burns on the front as well as back side of chest and stomach. There was marks of burns in the Gluteal region. There were marks of burns on both the lower limbs. There were marks of burns on the genital parts.

She had brought the case papers and on making a reference to the case papers of the hospital she testified that Afrojbanu was admitted in Ward No. 2. According to her Afrojbanu was having more than 90% burns and, therefore, she did not survive and died at around 1.20 at night on 17/2/1989. When she was admitted to the hospital she was conscious. The witness therefore, recorded the history. The patient herself informed the witness that she had poured kerosene on herself and burnt herself. When the police inquired of her, she informed that the patient was conscious and she accordingly endorsed in the margin of mark 8/1 (exh. 22, which has been described to be a complaint recorded at the instance of deceased Afrojbanu). In her cross-examination the witness has deposed that before the complaint was recorded she was not contacted by the police. She has also stated that she did not have any idea when the Executive Magistrate had visited the hospital although she was present.

7. From the aforesaid evidence of Dr. Kusumben B. Patel, who apparently is an independent witness, it would

clearly appear that Afrojbanu when admitted to the hospital herself gave the history to the effect that she attempted to commit suicide by pouring kerosene on herself and burning herself. Nothing has been placed on record to explain the evidence which has been given by Dr. Kusumben B. Patel. On the contrary, it is not understandable why the prosecution has not directed any investigation in the line in which the history has been recorded in the case papers. Even the case papers have not been placed on the record of the matter.

8. Dr. Shantilal Lallubhai Patel, P.W. No.6 exh. 23 has deposed to having examined Afrojbanu, who was brought to the hospital on account of she having sustained burns. This witness was present when Afrojbanu died. He referred to the certificate mark 8/5 (exh. 24) which was prepared from the case papers. Exh. 24 would indicate that Afrojbanu burnt herself sprinkling kerosene on herself. Prosecution has not adduced any evidence to throw light on this statement appearing in exh. 24 also.

Dr. Nareshbhai Dalpatbhai Kantharia, P.W. No.8 exh. 28 performed post mortem on the dead body of Afrojbanu. He has referred to injuries which he noticed on the dead body of Afrojbanu in his evidence. P.M. Report exh. 29 has been brought on record. What is important to be noticed from this document is that skull hairs were partly burnt and that over and above the indication of burn injuries in column 17 there has been noting of the parts of the body where there were no burn injuries. It appears that attempt has been made to show that left thumb of Afrojbanu did not sustain burns probably for explaining the left thumb impression alleged to have been taken on the dying declaration as well as the complaint. It would, however, be important to notice that brain and meninges have been shown to be congested. Both the lungs, heart and pericardium are also shown to be congested. The cause of death is shown to be septicemia as a result of extensive superficial to deep burns received by deceased Afrojbanu. P.M. Report exh. 29 would assume importance more particularly for appreciating the dying declarations and the complaint. As we have said the Doctor has noted the specific parts of the body which have not sustained burns in column no. 17 and one of the parts shown to be is left thumb of Afrojbanu. What is more important to be noticed in this context is congestion of brain as well as lungs. The question which would arise for consideration would be whether Afrojbanu could be said to be in such a state of mind as to reveal detailed facts with regard to how she sustained burns. It is the prosecution case that she

sustained more than 90% of burns. It is in the P.M. Report that she had her brain as well as lungs congested. It has been in the prosecution evidence that neither the Executive Magistrate nor the police officer contacted any of the medical officers in the hospital for finding out whether Afrojbanu was in fit state of mind when they had the occasion to see her so as to record her statement or dying declaration as the case may be. It is at this stage that we may note two documents which have been canvassed by the Id. A.P.P., first one is the complaint exh. 22, that is in the narration form and contains detailed particulars which would hardly have flown from Afrojbanu, who had sustained so extensive burns and who was in great pains. The first paragraph recites her name, age, occupation and address. Second paragraph recites about where she has been staying, about when her marriage was solemnized with Mohmad Hafij, about she having a male child aged 3 months and she residing with her husband, mother-in-law Khatijabibi, sister-in-law Umerabanu, father-in-law Abdul Kadar, her husband's younger brother Rafik and others. She has also stated about her husband plying a rickshaw. She stated to have alleged that he had illicit relation with his younger brother's wife Umerabanu and, therefore, he was beating her. In the third paragraph she has informed about she having had quarrel during the noon time with her mother-in-law and aforesaid sister-in-law Umerabanu. She has also narrated about what her mother-in-law was telling her. She has stated about the quarrels that ensued. She has also stated that her husband was at home but did not speak a word. She has stated that he had gone out after taking his lunch. She has then stated that at about 2.30 O'clock in the afternoon Umerabanu had caught hold of her and her mother-in-law Khatijabibi had poured kerosene on her and Umerabanu had lit the match stick. She has also stated about absence of all others except she and the aforesaid two persons. She has then stated about Chacha (uncle) having rushed there from downstairs and she having lost consciousness. She has stated having severe burns on her face and hand. Then she has stated that she did not know who brought her to the hospital. She has then stated that she was conscious at that point of time. She has stated that her mother-in-law and sister-in-law attempted to kill her by burning her alive. She has stated that since her right hand was burnt she was not able to sign. That is how her complaint has been recorded with an endorsement that left hand thumb impression was taken by writing a reason that right hand sustained burns. There is no identification of any body for the thumb impression. In the background of the finding in the P.M. Report as aforesaid, such a

detailed narration in the alleged complaint given by deceased Afrojbanu is highly improbable. It would be difficult to accept the statements appearing in this complaint in the presence of a contradictory story appearing in the evidence of other aforesaid medical officers. Same would be the position with regard to the dying declaration exh. 26 as deposed to by P.W. No. 7 Hitendrabhai Rambhai Patel exh. 25, who was the Executive Magistrate at the relevant point of time. He received Yadi at around 7.40 in the evening and reached at the hospital at about 8.55 O'clock in the evening. He came to know from a nurse that the patient was in the burns section of the hospital and the patient was conscious. He accordingly approached the patient and asked her who she was and she informed that she was Afrojbanu Mohmad Hafij. Upon having been asked about her age, she disclosed that she was 20 years of age. In reply to the question with regard to her address, she informed that it was Tatvada, Gopipura, Surat. Upon being asked as to what happened, she replied that she had sustained burns. Upon being asked as to how it had happened, she replied that at about 2.30 O'clock in the afternoon after taking her meals she was at home, that her mother-in-law and sister-in-law were also at home, that there was a quarrel between herself on one side and her mother-in-law and sister-in-law on the other side, that her mother-in-law poured kerosene on her and her sister-in-law lit the match stick and burnt her, that she having sustained burns shouted for help, with the result that some elderly person described as Chacha came up stairs and that she then lost her consciousness and did not know what happened thereafter. She has stated that she was completely conscious when her statement was being recorded. She also stated that she was seriously burnt on her face and hand. Upon being asked as to who was staying with her, she informed that over and above aforesaid two persons, her husband, brother, sister and her child aged 4 months were staying with her. She also informed that her mother was attending to her during her treatment in the hospital. Upon being asked as to whether she had any dispute with any body, she informed that she had such dispute with her mother-in-law and sister-in-law. The witness had also taken left hand thumb impression of Afrojbanu. He then signed the dying declaration and explained that since right hand thumb was affected with burns, he had taken the left hand thumb impression. In his cross-examination he has admitted that he came to know about the mother of the patient attending to the patient during the time of her treatment. But he could not say how many other persons were by her side. He admitted that he did not obtain any

certificate with regard to what was the state of mind of the patient at the time when the dying declaration was to be recorded. It is surprising to know from his cross-examination that he denied the suggestion that it was necessary to inquire about the state of mind of the patient before recording dying declaration. In the same manner he has denied the suggestion that it was necessary to inquire about who was the Doctor who examined the patient. He then admitted that it had to be ascertained from the Doctor as to whether the patient was in a position to give answers. He has finally admitted that he did not inform any of the Doctors about recording of dying declaration either before recording dying declaration or after recording dying declaration. He has also admitted that he did not obtain any witness for the identification of the thumb impression. From this piece of evidence as well as the tenor of the dying declaration we would at once observe that a great deal of doubt would surface about its genuineness and/or correctness. For the reasons which we have already noted we cannot accept the dying declaration as well as the evidence of the executive Magistrate, who recorded the dying declaration.

9. Mr. Raval made reference to two more pieces of evidence. They are in the form of oral testimony of Miya Mahmad Navajkhan Firkiwala and Suleman Miya Mahmad Master respectively P.W. 2 and 3 Exhs. 17 and 18. Having gone through the evidence of these two witnesses, we find nothing which would support the prosecution case. On the contrary these two witnesses have not said a word about the allegation which deceased Afrojbanu is alleged to have made through her mother/father about the character of her husband as noted hereinabove. The learned Additional Sessions Judge has narrated and addressed himself to both these pieces of evidence. They do not take the prosecution case any further.

10. We also need not refer to the evidence of Narusinh Visansinh Chavda, P.S.I. P.W. 9 exh. 30, who recorded complaint and Investigating Officer Udaykumar Tribhovandas Brahmbhatt, P.W. 10 exh. 32. We wish to observe that the investigation has not taken care of tracing out the truth when there were two diametrically opposite sets of facts appearing right from the inception as aforesaid. On the contrary, the two witnesses Yakubbbhai Ibrahimbbhai Mansur and Gulam Mohmuddin Noormiya, whose statements were recorded by the I.O. Udaykumar Tribhovandas Brahmbhatt had to be examined as defence witnesses. The aforesaid police officer has also not taken care to follow up the information which appeared at the threshold in the station diary entry exh.

33, which records that there was a message on wireless set from the hospital by Jashvantbhai Bhagubhai, Peon of the Maskati hospital to the effect that one patient Afrojbanu, wife of Mahmad Hafij aged 20 years residing at Gopipura, Tatvada House No. 8/684 had sprinkled kerosene on herself and sustained burns and her husband had brought her for treatment into the hospital and that her health was serious, but she was speaking and that she sustained burns on the whole of her body and that Investigating Officer be sent. When such an information was received quite immediately and at the earliest point of time, the Investigating Officer ought to have borne in mind the facts coming out in such information while also investigating the matter. Afterall the function of investigation is to find out truth with regard to the incident under investigation and not to allow contradictory facts to remain without ascertaining the correctness thereof. There was no reason for the Investigating Officer to keep back the evidence of Yakubbbhai Ibrahimbbhai Mansur and Gulam Mohmuddin Noormiya P.W. 1 and 2, exhs. 38 and 40. Both of these witnesses have been examined by the defence. Yakubbbhai Ibrahim is the neighbour who was first in point of time to rush to the scene of incident having heard the shouts of Afrojbanu. He so went from his residential place on the ground floor to the residential place of the deceased on the first floor. He was accompanied with his wife and other members of his family and reaching the scene of incident he found Afrojbanu in a burning state. He rescued Afrojbanu and in the said act of rescue he also sustained burns. Upon he having asked Afrojbanu as to what she did, she replied that as her husband did not take her to her father's place, she committed such an act. The witness has also testified that at the time of incident accused Umerabanu and accused Khatijabibi were not at home. Accused Khatijabibi had gone to the place of a relation where some relative had died and accused Umerabanu had gone to the place of one Aeshabibi. Since he had sustained burns on both of his hands he was treated in the Civil Hospital at Surat on the next day. It has not been suggested in his cross-examination what he deposed to in the examination in chief was not as per his earlier statement. He has also stated that there was no dispute between Afrojbanu and her husband. Although he did not go to the hospital immediately after the incident since he had also sustained burns and was mentally disturbed, he had gone to the hospital to inquire of the health of Afrojbanu thereafter. He produced at exh. 39 the medical certificate with regard to the injuries which he sustained in the rescue act.

11. D.W. 2 Gulam Mohmuddin Noormiya exh. 40 has also deposed to the incident. According to him when he reached the scene of incident he saw many female persons having collected there Mahmad Hafij, husband of Afrojbanu had also reached there. He called on phone for ambulance. No sooner the ambulance arrived the witness and Afrojbanu's husband had taken Afrojbanu in the ambulance to the hospital. Afrojbanu's mother and maternal uncle also boarded the ambulance. She was admitted in the emergency ward in the hospital and when the lady doctor and nurse asked about how she sustained burns she informed that she had herself caused the burns. When the doctor and the nurse left, Afrojbanu's mother told Afrojbanu to implicate her mother-in-law and her husband's younger brother's wife. In his cross examination the witness stated that he did not know the name of Afrojbanu's mother, that he was not related to the accused persons, that he remained present on the dates of hearing of the matter, that around 50 to 60 persons had collected in the locality at the time of incident, that he returned home from the hospital at about 5.00 O'clock in the evening and that he was not falsely testifying in order to save the accused persons.

12. Having gone through the aforesaid evidence and the nature thereof and having gone through the judgment of acquittal rendered by the learned Additional Sessions Judge, we are of the opinion that he cannot be said to have arrived at the decision unreasonably. It cannot, for a moment, be said that the approach of the learned Addl. Sessions Judge is erroneous, muchless manifestly erroneous or perverse. We have been referred to a decision in the case of Bharwad Jakshibhai Naginbhai v. The State of Gujarat reported in 1996 (1) G.L.H. p. 226 where Hon'ble Supreme Court has said that the law is now well settled that though the Code of Criminal Procedure does not make any distinction between the powers of Appellate Court while dealing with an order of conviction or acquittal, normally the Appellate Court does not disturb an order of acquittal in a case where two views of the evidence are reasonably possible. It is only when the approach of the learned trial Judge in dealing with the evidence is manifestly erroneous and that the conclusion drawn by him is wholly unreasonable and perverse, that the above principle would not be applicable. In this case it is crystal clear that the two diametrical opposite views of the facts have surfaced in the prosecution evidence itself. The Court has not to exert for finding out whether a probable or possible second view is possible or not. Thus, when the prosecution evidence itself discloses two different sets

of facts as aforesaid and that when the learned trial Judge has observed the witnesses deposing before him and come to the conclusion that the prosecution failed to establish the guilt of accused persons beyond reasonable doubt, there is no reason for us to deviate from that conclusion.

13. Reference has also been made to a decision of the Hon'ble Supreme Court in the case of Solanki Chimanbhai Ukabhai v. State of Gujarat reported in AIR 1983 S.C. 484, where powers of the Appellate Court in an appeal against acquittal have been dealt with and considered. The Apex Court has observed that the Appellate Court has full power to review at large the evidence on which the order of acquittal is founded and to reach conclusion that upon such evidence the order of acquittal should be reversed. However, in exercising that power the appellate Court should give proper weight and consideration to the these matters : (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial (3) the right of the accused to the benefit of any doubt, and (4) the slowness of the appellate Court in disturbing a finding of fact arrived at by a Judge, who had the advantage of seeing the witnesses, which finding would not certainly be disturbed if two reasonable conclusions can be reached on the basis of the evidence on record. As stated above this is a clear case where two views are possible even on the face of the prosecution evidence.

In the result, this appeal is required to be dismissed. Order accordingly. The bail bonds of the respondents - accused shall stand cancelled and the sureties, if any, shall stand discharged.

* * * * *

PVR.